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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,699	09/19/2006	Jeffrey Lee Jensen	63,460A	3121

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EXAMINER	
PURDY, KYLE A	

ART UNIT	PAPER NUMBER
1611	

MAIL DATE	DELIVERY MODE
06/25/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/593,699	JENSEN ET AL.	
	Examiner	Art Unit	
	Kyle Purdy	1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04/15/2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Application

1. The Examiner acknowledges receipt of the arguments filed on 04/15/2009.

2. Claim 1 is presented for examination on the merits. The following rejections are made.

Response to Applicants' Arguments

3. Applicants arguments filed 04/15/2009 regarding the rejection of claim 1 made by the Examiner under 35 USC 103(a) over Liang (CN 1123088) in view of Hacklet et al. (US 6040345), evidenced by Hagiwara et al. (US 7422762) have been fully considered but they are not persuasive.

4. The rejection of claim 1 made by the examiner under 35 USC 103(a) is **MAINTAINED** for the reasons of record in the office action mailed on 01/16/2009.

5. In regards to the 103(a) rejection, Applicant asserts the following:

A) Hagiwara is not applicable as prior art because its priority date is later than Applicants earliest date;

B) Liang teaches using "soynut powder", not "soybean powder"; and

C) The instant invention is unexpectedly superior to the other anti-cockroach compositions of the art.

6. In response to A, this argument is not found persuasive. Hagiwara is not used a prior art reference (i.e. basis of a rejection), but rather as an evidentiary teaching (i.e. to illustrate a property of a portion of the prior art) to show that a soybean powder is dehydrated soybean butter. Applicant is reminded that the critical date of extrinsic evidence showing a universal fact need not antedate the filing date. See MPEP § 2124.

7. In response to B, the Examiner is perplexed by this argument. In the translation provided by the Examiner to Applicant, there is no mention of 'soynut'. Of the 7 paragraphs present in Liang, paragraphs 3 and 4 only teach the use of "soybean powder". The Examiner did not find any teaching or suggestion of using "soynut powder". The Examiner politely requests Applicant to point to where Liang requires soynut rather than soybean.

8. In response to C, the properties would surely not have been unexpected because the instantly claimed product has been suggested by the prior art. As a base comprising soybean, sugar and insecticide was well known for attracting and killing cockroaches, it would have been obvious to include any other insecticide into such a composition wherein such an insecticide was known to have cockroachicidal properties. Now, while Applicants product may be superior to others currently on the market, i.e. Maxforce, the fact remains that Liang teaches a composition substantially similar to Applicants product. So that product too, when comprising hexaflumuron, would also show unexpected results when compared to other baits such as Maxforce. Applicants argument is not persuasive.

Maintained Rejections, of Record
Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. **Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liang (CN1123088, 05/29/1996; machine translation provided) in view of Hackler et al. (US 6040345, 03/21/2000) as evidenced by Hagiwara et al. (US 7422762).**

12. Liang is directed to fast acting agent for attracting and killing cockroaches. The composition comprise from between 1-96% by weight soybean powder, from between 1-96% by weight white sugar and various amounts of insecticides. Exemplified insecticides include boric acid and tetramethrin. It is taught that soy powder and white sugar have a luring effect for the cockroach.

13. Liang fails to teach the use of hexaflumuron as the pesticide.

14. Hackler is directed to benzoylphenylurea insecticides and their use in controlling cockroach populations. A disclosed compound is hexaflumuron (see column 1, line 15).

15. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Liang and Hackler with a reasonable expectation for success in arriving at a bait composition that comprises soynut butter, sucrose or fructose and hexaflumuron. While Liang does not teach using soynut butter, Liang does teach using soynut powder. It is the position of the Examiner that powder form is identical to the

butter form, expect that the powder does not have any water. That is, the powder form of soynut is a dehydrated butter form. Hagiwara confirms such a notion. Hagiwara states that soybean powder contains the oils and proteins of the soybean, but lack moisture (see column 2, lines 40-45, column 3, lines1-10 and column 4, line 30). Thus, one would have had a reasonable expectation for success in arriving at a composition with exactly the same nutritional and luring properties, with respect to the inclusion of soy, to that being claimed.

16. Liang incorporates white sugar into their composition. It is well known in the art that sugar consists mostly of sucrose with minor amounts of fructose (no reference cited). Thus, the white sugar required by Liang meets the limitation of the instant claim. The weight ratio set forth by the instant claim is also obvious. As Liang discloses a wide range of potential weight percentages for the soynut and the sugar, one of ordinary skill would be capable of optimizing their very own composition by picking and choosing from values within said ranges. If the results was a new, optimized composition wherein the soynut to sugar ratio was 1:0.1 (or 1:0.3), then this would be a product of ordinary product formulation and common skill. Regarding the inclusion of hexaflumuron, this is obvious. Because Liang is directed to cockroach bait, one would have been motivated to look to the art for other cockroach pesticides. Hexaflumuron was well known at the time to be an effective cockroach killer and one would have been motivated to include it in the composition of Liang with a reasonable expectation for success in killing cockroaches. With respect to the requirement that the bait be capable of being dispensed form a syringe, the composition of Liang is capable of such as it appears to be a viscous liquid-type composition as it contains fatty components. Therefore, the invention as a whole is *prima facie*

obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle A. Purdy whose telephone number is 571-270-3504. The examiner can normally be reached from 9AM to 5PM.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau, can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kyle Purdy/
Examiner, Art Unit 1611
June 22, 2009

/David J Blanchard/
Primary Examiner, Art Unit 1643